

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-127727-06

Date: DECEMBER 04, 2006

In Re:

Legend:

Decedent =
Date 1 =
Date 2 =
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Dear :

This is in response to your authorized representative's letter, dated May 15, 2006, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations and 2642(g) of the Internal Revenue Code to allocate Decedent's generation-skipping transfer (GST) exemption to Trust A.

The facts and representations submitted are summarized as follows. Decedent died testate on Date 1.

Under Article IV of Decedent's Will, the residue is to be divided into two trusts, Trust A and Trust B. Trust A is to be funded with that fractional portion of the residue equal to the Decedent's unused GST exemption. Trust B is to be funded with the balance of the residue. The terms of Trust A and Trust B are similar; both trusts are to be held for the benefit of Decedent's descendants.

Decedent's federal estate tax return (Form 706) was timely filed on Date 2. A notice of allocation of GST exemption was not filed with the return and no GST exemption was allocated on the return.

You have requested a ruling granting Decedent's executor an extension of time to make an allocation of Decedent's remaining GST exemption to Trust A.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust or property transferred, and the denominator of which is the value of the property transferred.

Generally, under section 2642(b)(2), if property is transferred as a result of the death of the transferor, the value of such property for purposes of determining the inclusion ratio of such property under section 2642(a), shall be its value as determined for federal estate tax purposes.

Under § 2631(a), for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,500,000 (the applicable exclusion amount under section 2010(c) applicable to Decedent's estate) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under section 2631(a), once made, is irrevocable.

Section 26.2632-1(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that, generally, an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the Form 706 filed on or before the date prescribed for filing the return as prescribed by section 6075(a), including extensions actually granted. An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) or (2), and an election under section 2632(b)(3) or (c)(5).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances,

including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. Notice 2001-50, 2001-2 C.B.189, provides that taxpayers may seek an extension of time to make an allocation described in sections 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, Decedent's executor is granted an extension of time until 60 days after the date of this letter to make an allocation of Decedent's remaining GST exemption to Trust A.

The allocation, once made, will be effective as of Decedent's date of death, Date 1. The inclusion ratio of Trust A will be determined based on Trust A's value as of Date 1 and the amount of GST exemption allocated by Decedent's executor to Trust A. If Decedent's executor allocates an amount of GST exemption equal to the fair market value of Trust A on Date 1, then Trust A will have a zero inclusion ratio. We express no opinion regarding the value of Trust A on Date 1.

The allocation of exemption should be made on Supplemental Form 706 to be filed by Decedent's executor. The Supplemental Form 706 is to be filed with the

Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the return. Additional copies are enclosed for this purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (2)

Copy of Letter for section 6110 purposes

Copies of Letter to file with supplemental estate tax return